S.B. Civil Writ Petition No.5471/02
Arun Kumar Sharma Vs. Additional Collector-II, Jaipur & Ors.

20.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Ashok Mishra for petitioner.
Shri B.S. Chhaba, Dy. GA
Shri Nitin Jain for respondent.

Heard learned counsel for the parties.

The petitioner has challenged the order passed by Panchayat Samiti, Dudu dated 24.1.2001 and Additional Collector, Jaipur dated 27.3.2002.

The dispute pertains to a piece of land which petitioner claims to possess for over a long period of time. He was granted patta by Gram Panchayat Sawarda, Panchayat Samiti, Dudu, District Jaipur on 20.8.1998. According to the petitioner

this patta was granted to him by resolution no.19 at the market rate of Rs.890/- per sq. yard. When the Sarpanch and the associate Panchas being prejudiced with the petitioner started raising construction of the shops on the land situated on the southern side of the plot of the petitioner facing its main gate, the petitioner filed a civil suit against such construction. The Sarpanch then managed to file an application in the name of certain unknown persons before the Panchayat Samiti, Dudu on 27.7.2000. The Panchayat Samiti entertained this application as appeal and ultimately passed an order on 24.10.2001 cancelling the patta given to the petitioner. The petitioner then filed revision petition before the Additional District Collector who by his order dated 25.7.2000 rejected

the same.

I have heard Shri Ashok Mishra, learned counsel for the petitioner, Shri B.S. Chhaba, learned Dy. Government Advocate and Shri Nitin Jain, the learned counsel for the respondent and scanned the material on record.

Shri Ashok Mishra, the learned counsel for the petitioner submits that the so called application which was treated as appeal was filed in the name of Aam Janta, Village Sawarda and such an application could not have been treated as appeal after an enormous delay of one and half year, particularly when Section 61 of the Rajasthan Panchayati Raj Act, 1994 provides for a limitation of only 30 days. He argued that in the same locality and adjacent to the plot of the petitioner patta has been given to one Smt. Rajiya

also which is also situated at a close distance of five feet from the way while her allotment has not been cancelled, only petitioner has been discriminated against. Action has been taken against the petitioner on account of malafides on the part of respondent no.4 Durga Dutt who was then Sarpanch of Gram Panchayat, Sawarda, Panchayat Samiti, Dudu. Learned Additional District Collector has failed to consider the arguments raised before them in this respect. Learned counsel also referred to certain proceedings of the Gram Panchayat to show that the resolution was carried out by as many as 9 members out of total 13. Such proceedings, according to learned counsel are certified copies of the resolution, and therefore, the findings recorded to the contrary by the Panchayat Samiti as also by the Additional District

Collector are bad in law. He therefore prayed that writ petition be allowed.

On the other hand Shri Nitin Jain, learned counsel for the respondent no.4 opposed the writ petition and argued that the application filed by Am Janta has rightly been entertained by the Panchayat Samiti. The Panchayat Samiti deputed a standing committee on administrative affairs to inspect the site of the land and the inspection report revealed that the land was pertaining to `Ghuni' and `Khell' of the public well and its allotment to the petitioner was not only contrary to the rules but also against the interest of public. The Panchayat Samiti has also recorded a finding that out of total 13 members of the Gram Panchayat, only 3 members had signed the proceedings whereas according to him minimum corum was

of 5. Besides, the Secretary of the Gram Panchayat had also give a note of dissent. According to them, Additional District Collector also conceded the arguments of the petitioner and has rightly rejected the revision petition and upheld the order of the Panchayat Samiti. He has, therefore, prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. Although it is a fact that Section 61 of the Act provides for a remedy of appeal and it also provides that any person by an order or direction of a Panchayat Samiti made or issued under this Act or rules or by-laws made thereunder may appeal against such order having jurisdiction within 30 days

from the date of such order / direction and such appeal in that case shall be heard by the Standing Committee of Panchayat Samiti constituted under clause (a) of sub-section (1) of Section 56. In the present case however the appeal has been accepted on the basis of application submitted to the Panchayat Samiti by residents of the village Sawarda which has been entertained on merits rather than being dismissed on the ground of limitation. Apart from the appellate powers, the Panchayat Samiti cannot be considered to have denuded of all its supervisory powers just because challenge has not been made to a decision of Gram Panchayat within the period of prescribed limitation which is otherwise found illegal. The Panchayat Samiti in exercise of its general supervisory powers which

may be traced to various other provisions of the Act, if on consideration of the material finds that the action complained of was palpably contrary to the law and has on the basis of such finding decided to interfere, it cannot be said that the Panchayat Samiti acted beyond its jurisdiction and outside the scope of its powers. The Panchayat Samiti in the present case has deputed the standing committee to go and inspect the site of the plot and the standing committee accordingly visited the site on 26.7.2000. In its inspection report, it has found that the land which was subject matter of allotment was part of the area covered by `Ghuni' and `Khell' and it was in fact the land of public utility and its allotment to the petitioner was found contrary to the public interest. The petitioner

produced before the Standing Committee proceedings of the Civil suit which has also been produced before this Court. The Standing Committee duly took into consideration all those documents. The petitioner also levelled certain allegations against respondent no.4 Durga Dutt, the then Sarpanch of Gram Panchayat before the Standing Committee which was not accepted by the Standing Committee. All these materials were placed before the Panchayat Samiti and the Panchayat Samiti also had the benefit of examination of original record. The Panchayat Samiti on the basis of the perusal of the records arrived at the conclusion that the allotment of the said land to the petitioner was not only against the public interest but also contrary to the rules. Upon perusal of the proceedings of the

Gram Panchayat, it held that out of total 13 members, signature of only 3 members were there as against the corum of 5. That too when the Sarpanch had signed, but the signature of the other two members was shown to have been made at a different place then the place where the signature of such Sarpanch was contained. Besides, the Panchayat Samiti also concluded that out of 13 members, the minimum number of members required for passing the resolution is 9, therefore, the resolution could not be deemed to have been validly passed. The Panchayat Samiti also took into consideration the note of dissent by the Secretary of the Gram Panchayat. The Additional Collector also in his order upheld the findings recorded by the Panchayat Samiti and upheld the order passed by the Panchayat Samiti. The

Additional District Collector in his order has not accepted the argument of the petitioner that he was not afforded an opportunity of hearing prior to passing of the impugned order by the Panchayat Samiti. It may be noted that not only the opportunity of hearing was given to the petitioner but the site was also inspected by the Standing Committee. At this stage, the learned counsel for the petitioner sought to raise two arguments that the note of dissent was put by the Secretary of Gram Panchayat only about the rate of the land and not about the decision of the allotment as such and secondly, in the proceedings of the Gram Panchayat that he possess, there were signatures of at least 9 members are there as against the total number of 13 members. When he was asked to pin point the arguments raised before the

Additional Collector and the pleadings of the present petition as to whether any such plea was taken by the petitioner, he failed to point out any such argument and therefore as far as the findings of the Panchayat Samiti that only 3 out of 13 members had singed the resolution in favour of the petitioner is concerned, such finding has to be accepted as correct and the proceedings which the petitioner now seeks to place before this Court cannot be accepted. When it is held that only three members have resolved in favour of allotting the land in question to the petitioner, such decision cannot be accepted as the decision of the Gram Panchayat and, therefore, the allotment in favour of the petitioner cannot be considered as legal. Even if what the petitioner has contended that now on

dissent by the Secretary was only limited to the price, that none the less remained the same because that also shows that allotment was made on the rate much lower than what was prevalent.

In my considered view neither the Panchayat Samiti nor the Additional District Collector committed any error in passing the impugned order which can be treated as error apparent on the face of the record so as to warrant interference by this Court in exercise of the power of judicial review even if the appeal is filed by delay but in substance the result is just and same. With these orders it likely to result in the revival of illegal order, which by itself could be sufficient reason of this Court to refuse to issue any kind of writ, being discretionary remedy.

In view of what has been discussed above, I find no merit in this writ petition. The writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

Rs/-